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November 11, 1996

13223-QA

FEDERAL EXPRESS

United States Department of Transportation
Room PL-401
Docket No. OST-95-950
400 7th Street, SW
Washington, DC 20590

OST-95-950-41

Re: Docket No. OST-95-950, Notice No. 96-23

Ladies and Gentlemen:

My name is Richard P. Kessler, Jr. and I am a citizen of the United States. I am the husband of Kathleen Kessler who died on ValuJet Flight 592 on May 11, 1996 when it crashed into the Everglades. As a partner in an Atlanta law firm, I have partners, associates and staff who fly on international flights. I also represent financial institutions and other clients that have officers, directors and employees that fly on international flights. I write in support of the proposed rule published in the Federal Register on September 10, 1996, Vol 61, No. 176, page 47692.

The 1990 Aviation Security Act (the "Act") contained Section 203, Passenger Manifest Collection Requirements (49 USC § 44909). The regulations implementing this Act are needed by the flying public.

The primary reason for the passenger manifest requirements, I am told, was to provide the Department of State with basic and adequate passenger contact information during an air disaster. The Department of State was to become the official point of contact for families for information regarding the air disaster. The responsibility for providing information to families was shifted to the Department of State and away from the airlines.

Once a disaster has occurred, a major trust issue is raised for the families concerning an airline's competency and reliability. In many instances the airline has just breached its contract for safe carriage of passengers. By enabling the Department of State to gather the passenger manifest information,

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the conflict of interest that arises when the airline has been the cause of the crash is eliminated.

A second reason for the passenger manifest requirement, although not specifically set forth in the legislative history of the Act, was to provide important information for aviation/national security and border control.

Numerous hearings have been held in connection with this legislation as well as the proposed regulation. The testimony and findings in all the hearings overwhelmingly identified the passenger manifest requirement as an essential procedure that would benefit the flying public. The passenger manifest requirement gives to the Department of State immediate information involving American citizens in international aviation incidents. The Department of State is provided with the full name of passenger, passport number, name and telephone number of passenger contact. In terms of national security, flight manifest information provides an initial line of information regarding those persons who might be accessing our country's borders thereby assisting counterterrorism, drug enforcement, and immigration. I am told that the terrorists who were convicted of blowing up the World Trade Center and planning numerous other attacks against American citizens flew into the United States aboard commercial passenger carriers.

In the recent crash of American Airlines Flight 965 in Cali, Columbia, I am told, the Department of State had to wait three days to obtain the flight manifest from American Airlines, instead of the one to three hours as required by the Act. Furthermore, the flight manifest received by the Department of State, I am told, was incomplete. The lack of compliance by the air carrier with the requirements of the statute, I am told, resulted in many of the victim's families having no official contact or information for days after the crash. Many of them had to travel to Cali, Columbia, to secure official confirmation that their family member was alive, dead, or even on the plane.

Section 204 of the Act requires the Department of State to "directly and promptly notify families of victims of aviation disasters . . . including timely written notice. The Secretary of State shall ensure that such notification by the Department is carried out, notwithstanding notification by any other persons." In the Cali crash, I am told, the Department of State, because it did not have the information, abdicated its responsibility to the airline to officially notify the families of the victims. The Department of State waited for the families to make contact with the Department of State rather than initiating the contact with the families as required by the law.

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The economic arguments advanced by the airlines in opposition to the proposal and set forth in the Supplementary Information accompanying the proposed regulation are incredible. We are talking about your wife, husband, children, grandchildren, parents, brothers and sisters. How can you place a dollar figure on this. If we are going to allow planes to fly that are unsafe because they lack pilot vision equipment for smoke filled environments, passenger smoke protection, smoke detectors and fire retardants, and justify this on the grounds that the cost to the airlines is too great to make the planes safer, then we should at least provide comfort for the families of the victims when the planes crash. It is only humane.

It is amazing that the airlines don't complain about the extra time I have to spend giving them my credit card number and the expiration date on the card when I make a reservation. They loudly complain, however, when I have to give them my full name, passport number, and name and phone contact of a passenger contact to protect my family should I die on a plane that crashes because of smoke in the cockpit.

It seems to me as a citizen of the United States and one who flies internationally that the Department of Transportation should adopt the proposed rule to implement the statute and force the airlines to comply with the statute. Six years should be enough time to study and promulgate a rather simple regulation to implement a clear and unambiguous statute passed by Congress in 1990.

I have personally experienced the failures of the airlines in aviation disasters. The Passenger Manifest information requirements are reasonable and should be enforced by the Department of Transportation for the good of the flying public and their families.

I urge the final promulgation of Part 243 - Passenger Manifest Information as proposed by the Department as mandated by 49 USC § 44909.

Respectfully submitted,



Richard P. Kessler, Jr

RPKjr/mjc